



FREDERICK COUNTY PLANNING COMMISSION

November 13, 2013

TITLE: Tolley Terrace, Section 5, Lots 501-504R,
and Section 6, Lots 601-603R

FILE NUMBER: S-734, AP 13392 (APFO 13394, FRO
13395)

REQUEST: Preliminary Plan Approval

The Applicant is requesting Preliminary Plan approval to subdivide two separate parcels totaling 29.44 acres into 5 new lots and 2 remainder lots, including a modification to allow panhandle lots in a major subdivision and approval of a public road extension.

PROJECT INFORMATION:

ADDRESS/LOCATION: Located at the terminus of Tall Oaks Drive.
TAX MAP/PARCEL: Map 89, Parcels 74 & 192
COMP. PLAN: Agricultural/Rural
ZONING: Agricultural
PLANNING REGION: New Market
WATER/SEWER: No Planned Service

APPLICANT/REPRESENTATIVES:

APPLICANT: Ira Steinberg and Anita Venner
OWNER: Ira Steinberg and Anita Venner
SURVEYOR/ENGINEER: JF Brown III & Assoc
ARCHITECT: N/A
ATTORNEY: Rand Weinberg

STAFF: Mike Wilkins, Principal Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

EXHIBIT 1- Preliminary Plan

EXHIBIT 2- Panhandle justification statement from Applicant

STAFF REPORT

ISSUE

The Applicant is requesting Preliminary Plan approval to subdivide two separate parcels totaling 29.44 acres into 5 new lots and 2 remainder lots, including a modification to allow panhandle lots in a major subdivision and approval of a public road extension.

BACKGROUND

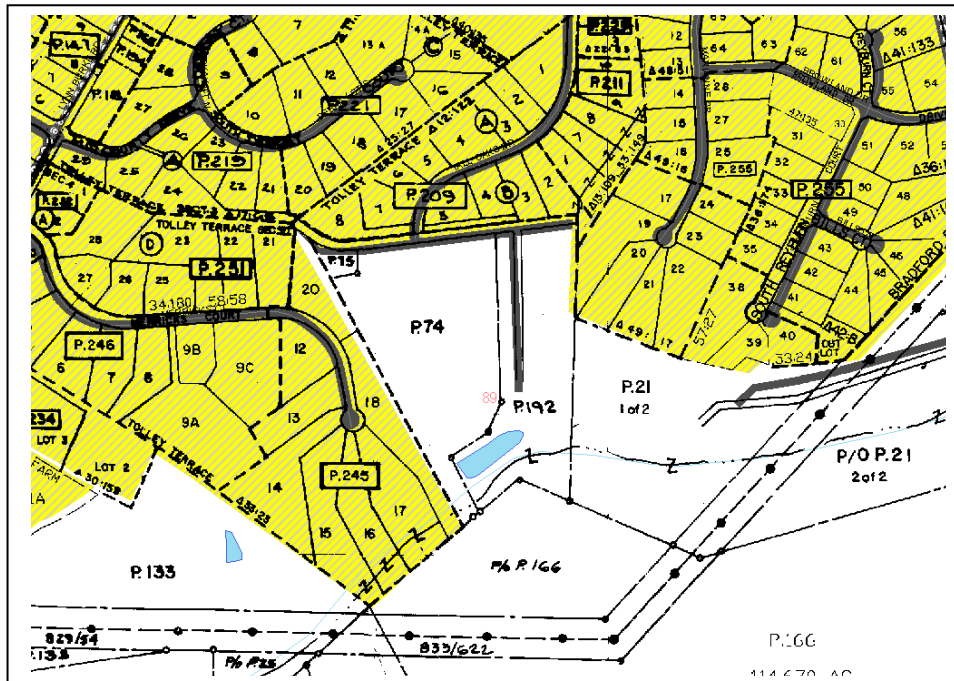
The property consists of two (2) separate Agriculture zoned parcels (see map below). Parcel 74 is a 16.11 acre parcel that was depicted on a 1969 survey plat and a 1974 deed. Parcel 192 is a 13.33 acre parcel created by a 1969 survey plat and a 1972 deed. §1-19-7.300 of the Zoning Ordinance permits Ag zoned parcels that existed as of August 18, 1976 to subdivide up to three (3) lots plus a remainder.

This property has been subject to previous subdivision applications;

- Both parcels were part of a larger original parcel, from which 13 lots were taken off in 1975 (Tolley Terrace Section 1, Lots 1-8A and 1-5B, PB 12 PG 122)

Based on the previous subdivision of the original, 1965 parcel, the proposed subdivision of each of the two parcels is considered a major subdivision, requiring FcPc review and approval.

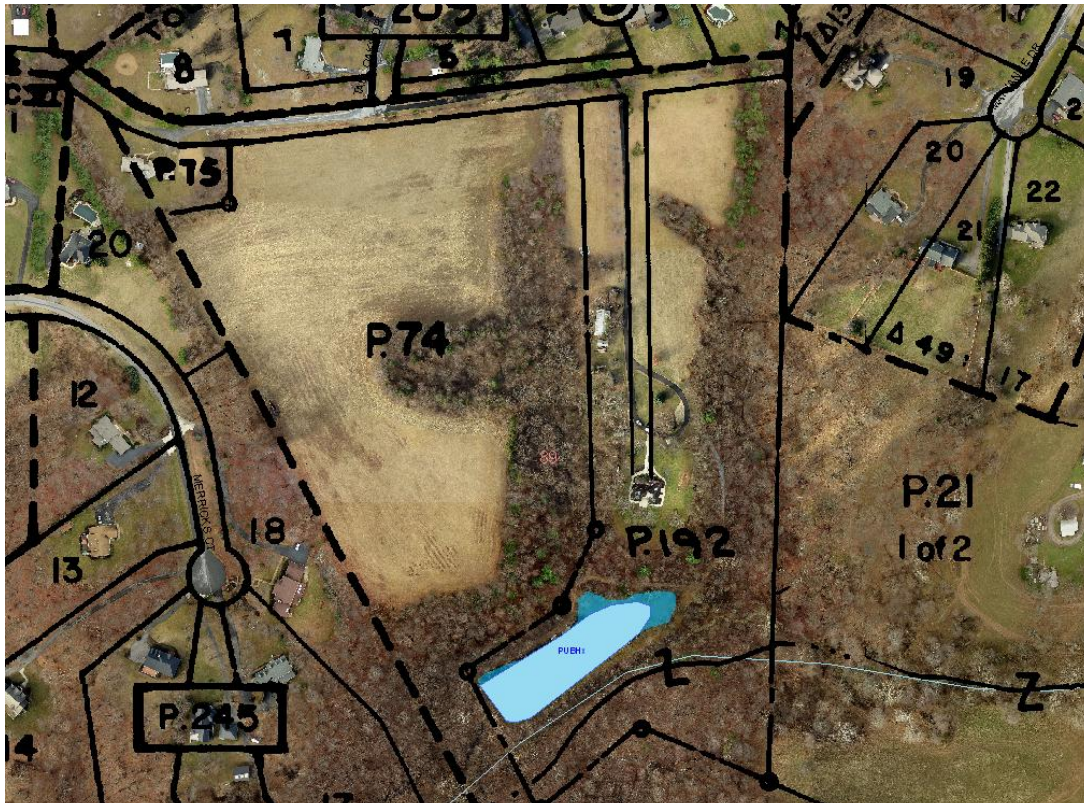
COMPREHENSIVE PLAN



Existing Site Characteristics

Parcel 74 consists of approximately 5 acres of forest and 11 acres of field that is used for agriculture. Parcel 192 contains approximately 4 acres of forest and 9 acres of open ground and contains an existing residential structure and accessory structures. Parcel 192 is flanked on the east and west sides by intermittent streams that feed a pond before entering into a more substantial stream (see map below).

DEVELOPMENT SITE AND SURROUNDINGS



ANALYSIS

A. ZONING ORDINANCE REQUIREMENTS

1. § 1-19-7.300. AGRICULTURAL DISTRICT.

§1-19-7.300(B): *The minimum lot size for single-family dwellings will be 40,000 square feet...*

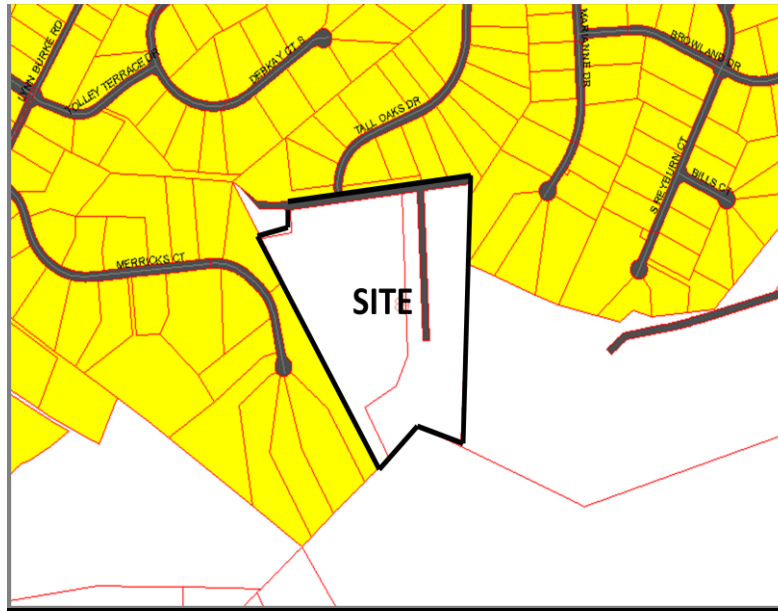
The proposed lots range in size from 1.81 acres to 14.20 acres and therefore meet the minimum 40,000 sq. ft. lot size requirement.

2. § 1-19-6.100. DESIGN REQUIREMENTS, AGRICULTURAL DISTRICT

The proposed lots will meet the minimum lot width (100 feet) and yard area (40 foot front yard, 30 foot rear yard, and 10 foot side yard) requirements for single family dwellings in accordance with §1-19-6.100 of the Zoning Ordinance. Two minor drafting errors on the plat must be corrected. The 30 foot yard area shown on Lot 601 must be increased to 40 foot front yard area, and a portion of the 40 foot yard on Lots 501 and 502 cross into the dedicated right of way. These issues are noted in the Hansen comments and is covered under the “comply with all Staff and agency comments” condition on page 8 of this report.

Zoning Ordinance Requirements Findings/Conclusions: The proposed subdivision will meet all Zoning Ordinance requirements.

ZONING MAP



B. SUBDIVISION REGULATION REQUIREMENTS

1. ***Land Requirements §1-16-217 (A):*** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The proposed land use and subdivision design complies with the Comprehensive Plan and will meet Zoning Ordinance requirements.

2. ***Land Requirements §1-16-217 (B):*** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The site design takes advantage of the site topography, wooded areas, water bodies, and adjoining subdivisions. The stream valleys, waterbody buffers and existing forest are being protected by FRO easements. The property abuts two R-1 Residential subdivisions and the street pattern is being continued into the subject site.

3. ***Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):*** *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas.*

Wet soils are located along the intermittent stream behind proposed Lots 503 and 603R and around the pond. The soils boundary is over 100 feet away from the proposed house sites, therefore a soils delineation report is not required.

PRELIMINARY PLAN LAYOUT



4. Road Access Requirements. Public Facilities §1-16-12 (B)(3)(b): For major subdivisions; Lots must directly access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.

Lots 501-504 will have access to a proposed extension of Tall Oaks Drive that will be constructed with a 20 foot wide paved travelway. However, the 20' extension as currently proposed does not serve Lot 502. Therefore, the Applicant will be required to extend the 20' portion of Tall Oaks Drive to a point past a driveway to serve Lot 502. The specific location of the terminus of the 20' extension will be determined at Improvement Plan. Lots 601-603 will access the existing stub end of Tall Oaks Drive, which has a 20 foot wide travelway. These three lots will utilize a common driveway. Lot access will meet the Subdivision Regulations requirements.

5. Other Street Requirements. Development on Dead End Streets §1-16-236 (K):

(K) Subdivisions on cul-de-sac or dead end streets shall be permitted only if approved by the Planning Commission (or county staff) in accordance with this division, the Design Manual, and the following provisions, as applicable:

(1) For proposed development on new or existing cul-de-sac or dead end street(s), except existing dead end streets described in subsection (2) below, the following requirements apply:

(a) Applicant must demonstrate the existence of site specific circumstances that make the design and development of a through street practically infeasible.

(b) In the AG and R-1 zoning district, cul-de-sac or dead end street(s) shall not exceed 1,800 feet in length and shall not serve more than 30 lots, dwelling units, or parcels. The Planning Commission may approve development of a greater number of lots and/or on a longer cul-de-sac or dead end street if the Planning Commission considers the individual property characteristics and the goals and principles of § 1-16-234 as set forth below in § 1-16-236(K)(1)(c).

§ 1-16-236(K)(1)(c). *the length of cul-de-sac or dead end street(s) may vary based on the density in the development section or land bay, property shape and size, topography, environmental constraints, lot size, unit types, and proposed land use. The density and length of cul-de-sac or dead end street(s) shall be reviewed by the Planning Commission and approved on a case by case basis.*

§ 1-16-234: *In designing highways, streets, roads, or common driveways, the subdivider shall be guided by the following principles.*

- (A) Design to consider the context of the proposed land use, including the existing and proposed land development patterns on adjacent parcels.*
- (B) Design for opportunities to create interconnections between adjoining parcels.*
- (C) Provide for adequate vehicular and pedestrian access to all parcels.*
- (D) Design local residential street systems to minimize through traffic movement and to discourage excessive speed.*
- (E) Provide reasonable direct access from local street systems to the primary transportation system.*
- (F) Local transportation systems and land development patterns shall not conflict with the efficiency of bordering arterial routes.*
- (G) Provide for safety, efficiency, and convenience of all users of the transportation system.*
- (H) Pedestrian-vehicular conflict points shall be minimized.*
- (I) Design to preserve, enhance, or incorporate natural, community, and historic resources.*
- (J) Be suitably located and designed/improved to accommodate prospective traffic, emergency service vehicles, and road maintenance equipment.*
- (K) Sidewalk, street design, right-of-way and paving shall be in accordance with these regulations and the County Design Manual.*

Tall Oaks Drive is currently a 2,400+/- foot long dead end street and it currently serves 39 lots or parcels. This application proposes to extend the dead end road an additional 550+/- feet and add 5 additional lots. The road extension to the western boundary of proposed Lots 502 and 503 will bring Tall Oaks Drive to within 100 feet of Merricks Court (a 2,300 foot long dead end road serving 25 lots). This proposed roadway design creates an opportunity for others to create a connection of the two streets sometime in the future, which would eliminate two long dead end roads.

Staff notes that the majority of the existing lots on Tall Oaks Drive are too small to be resubdivided due to current minimum lot size requirements and the fact that public water and sewer does not serve this subdivision. Staff has no objection to the proposed Tall Oaks Drive road extension and believes the principles of §1-16-234 are being met with this design. The nominal increase in dwelling units combined with the Applicant's willingness to stub the dead end street into the adjacent property increases the potential of an eventual connection to Merricks Court.

Staff recommends that the Planning Commission consider the individual property characteristics, the goals and principles of § 1-16-234 and § 1-16-236(K)(1)(c), the public safety risk to future residents, and circulation inefficiencies to determine if the proposed 2,950 foot long Tall Oaks Drive dead end road system serving 44 lots should be approved.

- 6. Lot Size and Shape. Panhandle Lots §1-16-219 (C)(2):** *Panhandle lots may be approved by modification of the Planning Commission in major subdivisions only when it is determined by the Commission that "excellence of design" will be achieved or that such lots are inaccessible to the road due to odd shape and/or topographical constraints. In each case, the Planning Commission will determine "excellence of design" based on the spatial relationship of the panhandle lot to other lots and the public road. Only physical design criteria such as odd shape and road inaccessibility, topography, existing utilities, proposed and existing well and septic constraints (Health Department criteria) and natural or man-made features shall be used by the Planning*

Commission in granting modifications for panhandle lots in major subdivisions.

Four panhandle lots are proposed in this subdivision:

- Lots 601-603 access Tall Oaks Drive panhandles. A proposed common driveway will serve these lots. Staff has no objection to this panhandle design as it utilizes an existing panhandle/strip of land (currently serving the existing residential structure on proposed Lot 603R) and meets the physical design criteria outlined in the Code.
- Lot 503 is considered a panhandle lot and not a taper lot because the lot lines break before the minimum 100 foot lot width is achieved (see definition of "Lot Types" under §1-16-12.). This lot will be served by its own driveway. Staff does not object to this lot design, but notes a minor adjustment of the lot lines could make this lot qualify as a taper lot and not a panhandle lot.

In order for the Planning Commission to approve the proposed panhandle lots, it must find that the lots meet "excellence of design based on the spatial relationship of the panhandle lot to other lots and the public road" or "that such lots are inaccessible to the road due to odd shape and/or topographical constraints." The Applicant's panhandle justification letter is attached to this report as Exhibit 2.

- 7. Water and Sewer Facilities. Public Facilities §1-16-12 (C):** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The property has a water and sewer classification of No Planned Service and must utilize private wells and septic systems. Successful percolation testing must be conducted and wells must be drilled prior to lot recordation.

Subdivision Regulation Requirements Findings/Conclusions: If the Planning Commission finds that the panhandle lots meet "excellence of design" and approves the use of a dead-end road network that is over 1,800 feet in length to serve more than 30 lots, the project will meet all Subdivision Regulation requirements once all agency comments and conditions have been satisfied.

C. OTHER APPLICABLE REGULATIONS

- 1. Stormwater Management – Chapter 1-15.2:** Stormwater management will be provided in accordance with the Maryland SWM Act of 2007. A SWM Concept Plan has been submitted and is under review.
- 2. APFO – Chapter 1-20:** These lots are the first five lots to be subdivided off the original 1965 parcel since the adoption of the APFO and are therefore exempt from meeting APFO requirements.
- 3. Forest Resource Ordinance – Chapter 1-21:** A Combined Preliminary/Final Forest Conservation plan has been submitted and is under review. The development site contains 10.77 acres of existing forest. The Applicant proposes to meet the Forest Resource Ordinance (FRO) requirements by placing 9.95 acres of forest into easement, planting 1.14 acres of new forest on site, and providing 0.50 acres of Forest Banking Credits. FRO mitigation must be provided prior to lot recordation, grading permits, or building permits, whichever is applied for first.

Summary of Agency Comments

Other Agency or Ordinance Requirements	Comment
Development Review	Approved.

Other Agency or Ordinance Requirements	Comment
Engineering (DRE):	
Development Review Planning:	Hold. Must meet all agency and FcPc comments and conditions.
State Highway Administration (SHA):	N/A
Div. of Utilities and Solid Waste Mngt. (DUSWM):	N/A
Health Dept.	Hold. Septic testing must be conducted, wells must be drilled.
Office of Life Safety	Approved
DPDR Traffic Engineering	Approved
Historic Preservation	Approved

RECOMMENDATION

If the Planning Commission makes the required findings that the proposed panhandle lots meet the requirements of §1-16-219 (C)(2) and approves the number of lots served by a dead-end road that exceeds 1,800 feet in length, then Staff has no objection to the conditional approval of the Preliminary Plan.

Based upon the findings and conclusions as presented in the staff report, the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements if the FcPc approves the use of the panhandle lot design in a major subdivision, and approvals the dead-end road over 1,800 feet in length that will serve more than 30 lots. Should the FcPc grant approval of this application (S-734, AP 13392), Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. The Preliminary/Final FRO plan must be approved prior to final Preliminary Subdivision plan approval. FRO mitigation must be provided prior to lot recordation, grading permit application, or building permit application, whichever is applied for first.
3. The Preliminary Plan approval is valid for five (5) years from the date of FcPc approval. Therefore, the Preliminary Plan approval expires on November 13, 2018.
4. The Applicant shall extend the 20' wide portion of Tall Oaks Drive to a point past the future driveway to serve lot 502 with the specific location to be determined at Improvement Plan.
5. The common driveway serving lots 601, 602, and 603R must be constructed prior to lot recordation.
6. The proposed extension of Tall Oaks Drive must be constructed or guaranteed prior to lot recordation.

PLANNING COMMISSION ACTION **MOTION TO APPROVE**

I move that the Planning Commission **APPROVE S-734 (AP 13392) with conditions** as listed in the staff report for the proposed **TOLLEY TERRACE** preliminary plan, including the modification in accordance with §1-16-219 (C)(2) to permit panhandle lots in a major subdivision, and approval of the dead-end road over 1,800 feet in length that serves more than 30 lots, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.